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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 351

CONSOLIDATED MACHINE TOOL CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (Pet. 22–26) is reported in 163 F. 2d 376. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R–1. 1–42)[1] are reported in 67 N. L. R. B. 737.

[1] The printed record for purposes of the petition for a writ of certiorari consists of one volume into which have been bound the printed "Appendix to Petitioner's Brief" in the court below (marked "1"), referred to herein as "R–1."; the printed "Appendix to Respondent's Brief" in the

JURISDICTION

The decree of the court below was entered on August 15, 1947 (Pet. 26–28). The petition for a writ of certiorari was filed on September 17, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether there is substantial evidence to support the findings of the Board that a majority of the Company's pattern makers, on or before January 16, 1945, designated the Pattern Makers League as their collective bargaining representative.

2. Whether, upon finding that employees who resigned from the League did so because of the Company's unfair labor practices, the Board acted properly in disregarding such defections for the purpose of determining whether the League had been designated by a majority of the employees, in holding that the League still remained

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court below (marked "2"), referred to herein as "R–2."; and the printed "Petition for Enforcement of an Order of the National Labor Relations Board" in the court below (marked "3"), referred to herein as "R–3." The opinion and decree of the court below are not included in the record but have been printed as Appendix A and Appendix B respectively to the petition for a writ of certiorari, being pp. 22–29, thereof.

the designated representative, and in ordering the Company to bargain with it.

A further question urged by petitioner but which we believe is not presented in this case is

3. Whether the failure of the League to file the information, financial statements and non-communist affidavits required by Sections 9 (f), (g), and (h) of the National Labor Relations Act, as amended, is ground for modifying a decree entered before the effective date of the amendment imposing such requirements.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act and of the Labor-Management Relations Act of 1947, are set forth in the Appendix, *infra,* pp. 18–25.

STATEMENT

Upon the usual proceedings, the Board, on April 25, 1946, issued its findings of fact, conclusions of law, and order (R. 1. 1–42). The pertinent facts, as found by the Board and shown by the evidence, may be summarized as follows:

About January 2, 1945, the Pattern Makers League of North America, A. F. of L., herein called the League, began to organize the Company's pattern makers and, by January 16, 1945, all but one of the Company's ten pattern makers had signed applications for membership in the

League (R–1. 4, 15; R–1. 50, 52–53, 54–55, 62, 104, 315–316).[2] On the following day, Lichtenwalter, the League's representative, requested the Company to recognize the League as the exclusive bargaining representative of the pattern makers (R–1. 18; R–1. 56–58, 84–85). Shortly thereafter, Foreman Maier, who was in charge of the pattern makers, learned directly from them that virtually all had applied for membership in the League (R–1. 17–18; R–1. 158–159, 217). Despite this, the Company, through its president, Ingle (R–1. 18; R–1. 56), notified the League, on January 26, that "we do not believe that you presently represent a majority of the patternmakers" and suggest that the League should petition the Board for an election (R–1. 18–19; R–1. 58, 316–317). Upon receipt of this communication, the pattern makers decided to defer filing such a petition until after the League had organ-

[2] The application form reads as follows (R–1. 62, 315):

PATTERN MAKERS' LEAGUE
of North America

Proposed by
Bro. R. Lichtenwalter
Date_____
Recommended by
Bro. Clyde Reynolds
Bro. J. Murphy

The subscriber respectfully represents that, being duly qualified as required by the laws of the League and your Association, he is desirous of being admitted to membership therein.

Frank Wehnerk
(Signature of Applicant)
Residence 22 Fien St.
(Union Label)

ized some of the other plants in the Rochester area (R–1. 19; R–1. 59).[3]

At a meeting of the League on March 27, all of the Company's pattern makers who had previously signed application cards, with but one exception,[4] executed cards, known as "Candidate's Applications" for formal initiation into the League and paid part of their initiation fees (R–1. 4, 15–16; 59–60, 62–63, 75–78, 95, 104, 109–111, 143, 317–320). On the next day, Lichtenwalter, the League's representative, met with the Company's attorney, Oviatt, and president, Ingle, and requested that the Company recognize the League as the collective bargaining representative of the pattern makers (R–1. 20; 63–64, 88). The Company's representatives replied that its answer to this request would be deferred until after an election previously requested by the Machinists in a unit excluding pattern makers, had been held (R–1. 17, 20; R–1. 63–64, 87–88, 93). Lichtenwalter acquiesced in this reply (R–1. 20; R–1. 64). When Oviatt or Ingle, during the course of this meeting, asked if the League could adduce proof of its majority, Lichtenwalter replied that,

[3] Shortly thereafter, the League secured applications for membership among the pattern makers of several other plants (R–1. 19, n. 12; R–1. 59).

[4] Employee N. J. Getzin signed an application for membership in the League in January, but did not sign a "Candidate's Application" (R–1. 4, 15; 62, 104, 315–316).

as was the fact, he "had at that time a majority of the pattern makers in their plant organized" but declined to show them the signed applications "because it is not the policy of the pattern makers League to show any applications to the company" (R–1. 20; R–1. 88).

On March 29, 1945, Foreman Maier told the pattern makers who worked under his supervision that the Company had severely criticized him for his handling of Employee Embrey's request for a release from the Company's employ and that the Company had attributed the pattern makers' interest and activity in the League to this incident. Maier requested them as a favor to him to defer their initiation in the League, which was scheduled for that night, until he had had an opportunity to clear himself of that charge. The pattern makers agreed to do so and the initiation was, accordingly, postponed (R–1. 20–21; R–1. 72–73, 112–117, 144–145, 148, 175, 181–182, 234, 243–244).

On April 5, the election requested by the Machinists was held (R–1. 21; R–1. 82). On the following day, Lichtenwalter, in order to obtain the Company's promised answer to the League's request for recognition, sought to reach President Ingle by telephone. Upon being informed that Ingle was not present, Lichtenwalter requested that Ingle communicate with him upon his return. No return call was made. On April 7, Lichten-

walter again sought to reach Ingle but without success (R–1. 21–22; R–1. 65).

Three days later, April 10, the League, having failed in its efforts to obtain recognition from the Company, filed with the Board a petition for investigation and certification of representatives of the Company's pattern makers (R–1. 22; R–1. 65, 321–322). Thereafter, representatives of the Board, the Company and the League met on April 18, 1945. At this meeting, the Board's representatives, to whom the League had turned over the membership application cards executed by the pattern makers, asked the Company if it would recognize the League without an election being held. When the Company declined to do so, it was agreed that the Board should conduct an election to determine whether the pattern makers desired to be represented by the League for purposes of collective bargaining (R–1. 22–23; R–1. 89–90, 323–327).

Following the execution of this agreement, Lichtenwalter, after a conversation with one of the pattern makers, requested the Board's regional director to take no further action on the League's petition because he had learned that the Company was engaged in the commission of unfair labor practices and that he would, therefore, file charges against it (R–1. 23; R–1. 69–71, 247–249). Two days later, the League filed with the Board a charge alleging that the Company had

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engaged in unfair labor practices (R–1. 23; R–1. 72, 91, 247). The election was never held (R–1. 23; R–1. 91).

Meanwhile, the Company, having succeeded in deferring action on the League's request for recognition by dilatory and evasive tactics, had taken steps calculated to undermine its majority status. Thus, as already stated, Foreman Maier on March 29, requested the pattern makers to postpone their initiation into the League and at the same time brought home to them the Company's disapproval of their membership in the League (*supra,* p. 6). Shortly thereafter, in April, Maier stated to Employee Simon that he knew of four of the pattern makers who were opposed to the League. Maier then asked Simon how he "stood" with the League. When Simon replied that he would not vote for the League if a majority of the men did not favor it, Maier declared that if the League succeeded in organizing the plant, the result would be that the wages of the pattern makers in the lower brackets would be raised to the level of the older employees, of whom Simon was one (R–1. 22; R–1. 117–122, 125–127).

Thereafter, the Company's superintendent, Hohnhorst, in July 1945, called the pattern makers, one at a time, to his office (R–1. 23; R–1. 175, 187, 270, 279). In the course of the ensuing interviews, Hohnhorst, after stating that charges of unfair labor practices had been filed

against the Company by the League and that the Company had been informed by a representative of the Board that it would have to bargain with the League or a hearing would be held, asked the pattern makers what their attitude was toward the League. He then asked them if they would sign a letter withdrawing their applications for membership in the League and they agreed to do so (R–1. 23–25; R–1. 187, 235–236, 256, 258, 266, 268, 275–277, 279, 280). A week later, Hohnhorst went to the pattern shop and presented the pattern makers, all but two of whom were present, with a letter of resignation from the League, saying to them, "Here is the letter you boys agreed to sign" (R–1. 25; R–1, 189–190, 236–237, 257, 330–331). All of them signed, including Employee Robinson who had never made application for membership in the League. Subsequently, the two pattern makers who were absent on that occasion also signed the letter (R–1. 25; R–1. 188–190, 191–192, 217). The letter informed the League that the signers were thereby withdrawing "our application cards to join" the League because "we do not want to become members of the League and we do not want the League to represent us in any way" (R–1. 25–26; R–1. 331). Hohnhorst transmitted the letter to the Company's attorney (R–1. 26; R–1. 192).

On September 5, 1945, a day before the Board hearing in the instant proceedings, Superin-

tendent Hohnhorst and the Company's attorney, Skivington, met with the pattern makers who had assembled in their shop on Foreman Maier's instructions (R–1. 26–27; R–1. 149–150, 177). Skivington informed them that the Board has in its possession their signed applications for membership in the League. He also stated that if they wished to withdraw from the League, two methods were available to them to accomplish that purpose: they could either testify at the hearing that they wished to discontinue their membership or write a letter to that effect. It was suggested that a letter be written (R–1. 26–27; R–1. 135–139, 150, 152, 179, 240–241, 278). Skivington then prepared two letters, one addressed to the Board and another to the League, stating in substance, that the Company's pattern makers were withdrawing their applications for membership in the League and that they did not wish to be represented by it for purposes of collective bargaining (R–1. 27–28; R–1. 129, 131, 328–330). Nine pattern makers signed the letter to the Board while eight of them signed the letter sent to the League (R–1. 28–29; R–1. 151–152, 179, 207, 266, 328–330).[5] The letters were subsequently delivered to the Board's attorney at the

[5] Employee Robinson had not applied for membership in the League (R–1. 206, 216) and did not sign the letter addressed to it. Employee Embrey, who had applied for membership, had left the Company's employ prior to this date (R–1. 50).

hearing (R–1. 29; R–1. 165, 201). At least three of the pattern makers testified at the hearing that they had no intention of withdrawing from the League prior to the meeting with Skivington (R–1. 29; R–1. 148–149, 178–179, 273).

Upon the basis of the foregoing facts, the Board concluded that the League was on January 16, 1945, and at all times thereafter, the exclusive bargaining representative of the Company's pattern makers, who constitute an appropriate unit for collective bargaining (R–1. 4–5, 16). It pointed out that the signing by the pattern makers of the application for membership in the League constituted a designation of the League as bargaining agent (R–1. 4–5, 33–35). It held that the employee's subsequent testimony as to his state of mind when he signed the card "cannot operate to overcome the effect of his overt action in having signed the application card" (R–1. 4–5, 33–35). It further found that the record did not support the Company's contention that the signing and delivery of the application cards were "conditional" (R.–1. 5; R–1. 74–75). It found that the attempts of the employees to withdraw their designation of the League was not voluntary but rather was the result of the Company's unfair labor practices; it was, therefore, ineffectual to deprive the League of its status as collective bargaining representative (R–1. 5–6, 35). Accordingly, the Board found that by re-

fusing to bargain collectively with the League, the Company had engaged in unfair labor practices within the meaning of Section 8 (5) of the Act (R–1. 6–7).[6]

The Board's order required the Company to cease and desist its unfair labor practices, to bargain collectively with the League and to post the usual notices (R–1. 7–8).

On February 20, 1947, the Board filed in the court below a petition for enforcement of its order (R–3. 1–7). On July 25, 1947, the court handed down its opinion (Pet. 22–26) and on August 15, 1947, entered its decree enforcing the Board's order with one minor modification not here relevant (Pet. 26–29).[7]

ARGUMENT

1. The Company's contention (Pet. 3–4, 7–10, 14–15) that the Board's finding that the League was, on January 16, 1945, and at all times thereafter, the exclusive bargaining representative of the Company's pattern makers, is not supported

[6] The Board also found that the Company, by its threats of economic reprisal should the League become the established bargaining representative, by its interrogation of the pattern makers as to their union membership, and by its efforts to induce resignations from the League, had violated Section 8 (1) of the Act (R–1. 2–4). The court below sustained these findings (Pet. 25). These findings are not here challenged.

[7] The court inserted before the word "employees" in one paragraph of the decree, the word "pattern-maker" (Pet. 25, 27).

by substantial evidence, presents no question of general importance. In any event, the evidence summarized in the Statement, *supra,* pp. 3–11, affords full support for the challenged finding. In holding that an application for membership in the League constituted a designation of the League as collective bargaining representative (R–1. 4), the Board was applying a rule uniformly approved by the courts. *Lebanon Steel Foundry Co.* v. *National Labor Relations Board,* 130 F. 2d 404, 407 (App. D. C.), certiorari denied, 317 U. S. 659; *National Labor Relations Board* v. *Louisville Refining Co.,* 102 F. 2d 678, 680 (C. C. A. 6), certiorari denied, 308 U. S. 568; *Continental Oil Co.* v. *National Labor Relations Board,* 113 F. 2d 473, 480 (C. C. A. 10), certiorari denied as to this point, 311 U. S. 637; *National Labor Relations Board* v. *Somerset Shoe Co.,* 111 F. 2d 681, 687 (C. C. A. 1); *National Labor Relations Board* v. *Chicago Apparatus Co.,* 116 F. 2d 753, 756 (C. C. A. 7); *Pueblo Gas & Fuel Co.* v. *National Labor Relations Board,* 118 F. 2d 304, 307–308 (C. C. A. 10); cf. *National Labor Relations Board* v. *Bradford Dyeing Ass'n,* 310 U. S. 318, 339–340; *Brotherhood of Railway and Steamship Clerks* v. *Virginia Ry. Co.,* 125 F. 2d 853, 858 (C. C. A. 4).[8]

[8] The Company's assumption (Pet. 20) that the amendments to the National Labor Relations Act made by the Labor Management Relations Act of 1947 would preclude the Board from finding an employer guilty of a refusal to bargain col-

Equally without merit is the Company's further contention (Pet. 3, 7–8) that the applications for membership in the League executed by the pattern makers were ineffective to constitute it as their bargaining representative because (a) four of the pattern makers testified at the hearing before the Board that they signed the cards merely for the purpose of being excluded from the bargaining unit which the Machinists sought to represent (R–1. 242–243, 254–255, 267, 275) and (b) one of them also testified that his application was not to become operative until the League had organized a substantial number of the pattern makers employed elsewhere in the city of Rochester (R–1. 242–243). As the Board stated (R–1. 5), the testimony of one who signs an application for membership in a union as to his subjective state of mind when he executed the application cannot operate to overcome the effect of his overt action in signing such an application. *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. 2d 780 (C. C. A. 9), certiorari denied, 312 U. S. 678.

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lectively in any case unless there had previously been an election by secret ballot, is inaccurate. While Section 9 (c) of the Act as amended requires the Board to hold an election as a prerequisite to certification, no provision of the Act indicates any intention on the part of Congress to preclude a finding of a refusal to bargain in a case such as this where the employer, at the time of its first unfair labor practices, knew the union in fact had a majority. The relevant sections, 8 (5) and 9 (a), have not been changed in any respect material to this question by the amendments.

Furthermore, the isolated testimony of one of the pattern makers to the effect that *his* application for membership was conditioned upon the happening of a future event, even if believed, is insufficient, as the Board noted (R–1. 5, n. 7), to establish that the applications of the remaining eight pattern makers, who, in any event, constituted a majority, were similarly qualified. Moreover, the credible testimony, as found by the Board, refutes the Company's assertion. Representative Lichtenwalter of the League categorically denied (R–1. 74–75), and the Board credited his testimony (R–1. 5), that the applications were conditioned upon the happening of a future event.

2. The Company further contends that even if it be assumed that a majority of the pattern makers had designated the League by signing its cards, they voluntarily withdrew such designation in the letters of July 30 and September 5, 1945 (Pet. 8, 9, 11–12, 15). However, as the Board found, the attempted withdrawals were the result of the Company's unfair labor practices (R–1. 5–6). This Court has repeatedly held that a loss of majority by reason of unfair labor practices is ineffectual to deprive a union of its status as exclusive collective bargaining representative. *Franks Bros. Co.* v. *National Labor Relations Board,* 321 U. S. 702; *National Labor Relations Board* v. *P. Lorillard Co.,* 314 U. S. 512, 513; *International Ass'n of Machinists* v.

National Labor Relations Board, 311 U. S. 72, 81–82; *National Labor Relations Board* v. *Bradford Dyeing Ass'n,* 310 U. S. 318, 339–340.

3. The Company contends (Pet. 19) that the decree should be reviewed because the League is not qualified to act as bargaining representative under the new requirements imposed by the amendments to the National Labor Relations Act made by the Labor Management Relations Act of 1947. This Act admittedly was not in effect at the time of the opinion or decree below. However, the Court need not concern itself in this case with the effect of the amendments on prior decrees ordering collective bargaining with a union which has not met the requirements of the new law. The League has fully met all the requirements of the new Act. The League, according to information furnished us by the Secretary of Labor, on or before August 28, 1947, filed with the Secretary of Labor all the documents and reports required by Section 9 (f) of the Act as amended. The League, on about October 27, 1947, filed with the Board the appropriate affidavits setting forth the manner in which it had furnished to all its members copies of the financial report filed with the Secretary of Labor. Each of the officers of the League, on October 10, 1947, filed with the Board affidavits that "I am not a member of the Communist Party or affiliated with such party. I do not believe in, and I am not a

member of or support any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods.",[9] all as required by Section 9 (h) of the Act as amended.

CONCLUSION

The decision below, sustaining the Board's findings and order, is correct and presents no conflict of decisions or questions of general importance. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

DAVID P. FINDLING,
Associate General Counsel,

RUTH WEYAND,
Acting Assistant General Counsel,
National Labor Relations Board.

NOVEMBER, 1947.

[9] The constitution of the Pattern Makers' League of North America, in effect October 1, 1942 (and not since amended in any respect here material) provides in Law 14, clause 1, that "The officers of the League shall consist of a General President and an Executive Board of five (5) members." Affidavits complying with Section 9 (h) of the Act have been filed by George Q. Lynch, General President, George V. Christianson, General Chairman of the Executive Board, W. A. Brown, M. P. Cushing, James Jordan and M. C. Schenley, members of the Executive Board.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C., sec. 151 *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

* * * * *

(c) Whenever a question affecting commerce arises concerning the representation

of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

* * * * *

SEC. 10. (e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

The pertinent provisions of the Labor Management Relations Act of 1947 (Act of June 23, 1947, Public Law 101, 80th Cong., 1st Sess., Chap. 120) are as follows:

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

* * * * *

"RIGHTS OF EMPLOYEES

"SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

"UNFAIR LABOR PRACTICES

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

"REPRESENTATIVES AND ELECTIONS

"SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employ-

ment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

* * * * *

"(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting

commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

* * * * *

"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

"(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal

year, including the purposes for which made; and

"(2) furnish to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporane-

ously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

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